

**TECHNICAL SUPPORT DOCUMENT
FOR THE
DIRECT-FINAL APPROVAL
OF THE
SAN FRANCISCO BAY AREA
TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL**

PREPARED BY

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RULE IDENTIFICATION

AGENCIES:

ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG), BAY AREA AIR QUALITY MANAGEMENT DISTRICT (BAAQMD), METROPOLITAN TRANSPORTATION COMMISSION (MTC).

CURRENT SIP APPROVED RULE:

THE SAN FRANCISCO BAY AREA TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL - CONFORMITY PROCEDURES; AND THE SAN FRANCISCO BAY AREA TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL - INTERAGENCY CONSULTATION PROCEDURES. SEE 62 FR 54587 (OCTOBER 21, 1997).

INTERIM SUPERSEDED SUBMITTALS:

SAN FRANCISCO BAY AREA CONFORMITY CRITERIA AND PROCEDURES FOR TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS; AND TRANSPORTATION CONFORMITY INTERAGENCY CONSULTATION PROCEDURES, SUBMITTED ON AUGUST 6, 1998.

SUBMITTED RULES SUBJECT TO THIS TSD:

SAN FRANCISCO BAY AREA TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL - CONFORMITY PROCEDURES (JULY 26, 2006); AND SAN FRANCISCO BAY AREA TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL – INTERAGENCY CONSULTATION PROCEDURES (JULY 26, 2006); ADOPTED BY BAAQMD ON JULY 19, 2006, ADOPTED BY ABAG ON JULY 20, 2006, AND ADOPTED BY MTC ON JULY 26, 2006; SUBMITTED BY THE CALIFORNIA AIR RESOURCES BOARD ON DECEMBER 20, 2006.

RULE SUMMARY

ABAG, BAAQMD, and MTC adopted the submitted protocols to update the transportation conformity SIP in the San Francisco Bay Area consistent with the amendments made to the Clean Air Act under the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005, and to clarify the interagency consultation process.

EPA CRITERIA/EVALUATION

Under SAFETEA-LU, states are required to address and tailor three sections of the conformity rule in their conformity state implementation plans (SIPs):

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122 (a)(4)(ii), which addresses the requirement to obtain written commitments to implement any control measures that are relied upon and that are not included in a metropolitan transportation organization's (MPO's) regional transportation plan (RTP) and transportation improvement program (TIP) prior to using emissions reductions associated with the control measures in conformity determinations and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses the requirement to obtain written commitments to any mitigation measures that are relied upon prior to a project-level conformity determination and the requirement that project sponsors must fulfill such commitments.

For this TSD, we present our evaluation of the submitted transportation conformity protocol in the form of two checklists: one for the interagency consultation procedures portion of the Bay Area protocol followed by a second checklist for the conformity procedures portion of the Bay Area protocol. Within each checklist, the requirements are shown in the left-hand column and the locations in the submitted protocol that address the requirements are shown in the right-hand column. Where necessary, additional explanation is provided at the end of the second checklist.

INTERAGENCY CONSULTATION

Interagency consultation is addressed in the San Francisco Bay Area Transportation Air Quality Conformity Protocol – Interagency Consultation Procedures, adopted July 26, 2006. The sections of the procedures that address each of the required elements are listed below in the column to the right of the description of the required element.

GENERAL: [93.015(a)]. A conformity SIP shall include procedures for interagency consultation, conflict resolution, and public consultation. EPA encourages development of ■extensive, effective consultation procedures that will resolve problems as early ...as possible.● 58 FR 62188 at 62201, November 24, 1993. The procedures must be written in a manner that gives them full legal effect. 40 CFR 51.390.

	Consultation is required on the development of the regional transportation plan (RTP), the transportation improvement program (TIP), on conformity determinations, and on the development of state implementation plan (SIP) revisions that affect transportation. [93.105(a)(1)].	Addressed – detailed analysis included below under “general factors” and “specific processes”
	MPOs and State departments of transportation must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on specific processes for interagency consultation. [93.105(a)(2)]	Addressed – detailed analysis included below under “specific processes”

INTERAGENCY CONSULTATION PROCEDURES: GENERAL FACTORS [93.105(b)]. States shall provide well defined consultation procedures in the implementation plan. Organizations with responsibilities for developing, submitting or implementing provisions of an implementation plan (including MPOs, State and local air quality planning agencies, and State and local transportation agencies) must consult with each other with and local or regional offices of EPA, the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA).

The interagency consultation procedures must include, at a minimum, the following general factors:

procedures that require that agencies consult on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations [93.105(b)(1)];	RTP: II.a. and c. TIP: III.a. and c. SIP: IV.a.
the roles and responsibilities of each agency at each stage in the SIP development process and the transportation planning process, including technical meetings [93.105(b)(2)(i)];	RTP: II.b. TIP: III.b. SIP: IV.b.
the organizational level of regular consultation ¹ [93.105(b)(2)(ii)];	I.
a process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication [93.105(b)(2)(iii)];	RTP: II.a. and c. TIP: III.a. and c. SIP: IV.a
the frequency of, or process for convening, consultation meetings and responsibility for establishing meeting agendas [93.105(b)(2)(iv)];	I.
a process for responding to significant comments of involved agencies [93.105(b)(2)(v)]; and	RTP: II.a. and c. TIP: III.a. and c. SIP: IV.a.
a process for the development of a list of the transportation control measures (TCMs) that are in the applicable implementation plan [93.105(b)(2)(vi)].	II.c., III.c. See reviewer notes at the end of this TSD.
SPECIFIC PROCESSES. ² Interagency consultation procedures shall include the specific	

¹ Generally, interagency consultation procedures should include information such as the organizational level of the people who attend meetings (i.e., staff, supervisor, manager), who runs the meetings, and procedures for determining whether a meeting can be conducted via conference call or should be face-to-face, and for determining which issues can be handled via email.

² For each item listed under ■Specific Processes■ there should be well-defined procedures of what will be done, which agencies will do it, when it will be done, and how it will be done. To ensure the process is clear and

processes listed below [93.105(c)]:		
A process involving at least the MPO(s), State and local air quality planning and transportation agencies, EPA, and the Department of Transportation (DOT) for the following [93.105(c)(1)]:		
	Evaluating and choosing models and associated methods and assumptions for hot-spot and regional emissions analyses [93.105(c)(1)(i)];	V.
	Determining which minor arterials and other projects are "regionally significant" ³ for the regional emissions analysis (in addition to those functionally classified as principal arterials or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel) [93.105(c)(1)(ii)];	IX.1.
	Determining which projects should be considered to have a significant change in design concept and scope from the RTP or TIP [93.105(c)(1)(ii)];	IX.2.
	Evaluating whether otherwise exempt projects (see 93.126 and 93.127) should be treated as non-exempt where adverse impacts are possible for any reason [93.105(c)(1)(iii)];	IX.3.
	Determining whether past obstacles to implementation of TCMs in approved SIPs have been identified and are being overcome (for TCMs behind SIP schedules) [93.105(c)(1)(iv); 93.113(c)(1)];	VII.
	Determining whether State and local agencies are giving maximum priority to approval and funding for TCMs in approved SIPs [93.105(c)(1)(iv)];	VII.

enforceable, the procedures should provide that, for each action to be taken, the responsible party is specified and is a legal entity against whom enforcement action can be taken. Timing can be specified in a number of ways (examples would include: every July 1 or when development of an RTP (SIP, TIP) first begins or every quarter beginning in a certain month, etc.). It is also very helpful to indicate what materials and information will be provided and how and when. The California Statewide Conformity group suggested 30 days for most reviews.

³ This is in addition to the projects required to be included by application of the definition of "regionally significant project" in 40 CFR 93.101.

	Determining whether delays in the implementation of approved SIP TCMs necessitate revisions to the SIP to remove or substitute such TCMs or other emission reduction measures [93.105(c)(1)(iv)];	VIII.
	Notification of RTP and TIP amendments which only add or delete exempt projects listed in ●93.126 and 93.127 [93.105(c)(1)(v)]; and	RTP: II.c. TIP: III.c. See reviewer notes at the end of this TSD.
	Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by ●93.109(l)(2)(iii) [93.105(c)(1)(vi)].	N/A
A process involving at least the MPO and State and local air and transportation agencies for [93.105(c)(2)]:		
	Evaluating events that will trigger new conformity determinations in addition to those required by ●93.104 [93.105(c)(2)(i)]; and	I.
	Consulting on emissions analysis for transportation activities which cross borders of MPOs, nonattainment areas or air basins [93.105(c)(2)(ii)].	IX.6.
Where the metropolitan planning area does not include the entire nonattainment or maintenance area, procedures must specify a process involving the MPO and the State DOT for cooperative planning and analysis for determining conformity of projects outside the metropolitan area and within the nonattainment or maintenance area [93.105(c)(3)].		IX.6.
Specifies a process to ensure disclosure of plans for regionally significant non-FHWA/FTA projects (including projects for which alternatives are still being considered) to the MPO on a regular basis, and immediate disclosure of any changes to those plans [93.105(c)(4)].		RTP: II.b. and c. TIP: III.b. and c. IX.4.
Provides a process involving the MPO and other federal funds		II.c.

recipients for assuming project location and design concept/scope where these features not adequately defined for regional emissions analysis [93.105(c)(5)].	III.c. V. See reviewer notes at the end of this TSD.
Specifies a process for consulting on design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO [93.105(c)(6)].	V.
Specifies a process for providing final documents and supporting information to each agency (including federal agencies) after approval or adoption [93.105(c)(7)].	II.a. and c. III.a. and c. IV.a and b.
RESOLVING CONFLICTS [93.105(d)].	
The process for resolving conflicts must specify that:	
Unresolvable conflicts among state agencies or between state agencies and an MPO shall be escalated to the Governor or Governor's designee (designee can not be the State or local air agency, State department of transportation, State transportation commission or board, or an MPO) [93.105(d)];	X.6.
The State air agency has 14 calendar days (the implementation plan should define the procedures for starting the 14-day clock) to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments [93.105(d)]; and	X.6.
If the State air agency appeals to the Governor, the final conformity determination must have Governor's concurrence. If there is no appeal, the MPO or state DOT may proceed with the final conformity determination [93.105(d)].	X.6.
PUBLIC CONSULTATION PROCEDURES. Affected agencies⁴ making conformity determinations	

⁴ Interagency consultation portions of transportation conformity SIPs should define the "affected agencies" that are responsible for fulfilling 40 CFR 93.105(e) requirements. The Bay Area protocol does not specifically identify "affected agencies," but we recognize that, in the San Francisco Bay Area, the term "affected agencies" in

on transportation plans, TIPs, and projects shall establish a proactive public involvement process [93.105(e)]. This general requirement can be satisfied by referencing the MPO's procedures, ⁵ in addition to specifying or referencing the additional items listed below.		
Consultation procedures must set out a public process that, at a minimum:		
	Provides for reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a transportation plan or TIP conformity determination, consistent with 93.105 and 23 CFR 450.316(a) [93.105(e)];	XI. See reviewer notes at the end of this TSD.
	Ensures that any charges imposed for public inspection or copying are reasonable [49 CFR 7.43, 93.105(e)];	XI.
	Provides that agencies must specifically address in writing all public comments that plans for regionally significant non-FHWA/FTA projects are not properly reflected in the emissions analysis [93.105(e)]; and	XI.
	Provides opportunity for public involvement in project conformity determinations as otherwise required by law [93.105(e)].	XI.

this context includes only MTC and U.S. DOT. Both MTC and U.S. DOT make conformity determinations for RTPs and TIPs. MTC is responsible for establishing and following public consultation procedures consistent with the requirements in 23 CFR 450.316(a). Following MTC's determination, U.S. DOT's determination is made without further public process. Unlike RTPs and TIPs, MTC does not make project-level conformity determinations. Rather, U.S. DOT determines conformity for individual projects, and does so with reliance upon the public consultation procedures followed by the California Department of Transportation (Caltrans) and individual project sponsors (such as other Federal agencies, cities, counties or transportation authorities) in compliance with the National Environmental Policy Act (NEPA) or California Environmental Quality Act (CEQA). This is acceptable.

⁵ The specific requirements and criteria for MPO public involvement are set forth at 23 CFR 450.316(a). Under these requirements, MPOs are directed to periodically review their public involvement process to assure that full and open access is provided to MPO decision-making processes (see 23 CFR 450.316(a)(1)(x)). Public involvement provisions are reviewed in the context of certification or planning reviews, which are conducted by FHWA and FTA under 23 CFR 450.334(b) no less often than once every four years.

CONFORMITY PROCEDURES

Under SAFETEA-LU, conformity SIPs must also include conformity procedures that address 40 CFR 93.122(a)(4)(ii) and 93.125(c). The remaining conformity procedures apply automatically and states are not required to address them in conformity SIPs.

Conformity procedures are addressed in the San Francisco Bay Area Transportation Air Quality Conformity Protocol – Conformity Procedures, adopted July 26, 2006.

ENFORCEABLE WRITTEN COMMITMENTS REQUIRED FOR EMISSIONS REDUCTION CREDIT:

Emissions reduction credit from any control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities [93.122(a)(4)(ii)].

Language addressing 93.122(a)(4)(ii) should include, at a minimum, the following:

In accordance with 40 CFR 93.122(a)(4)(ii), prior to making a conformity determination on the RTP or TIP, [MPO] will not include emissions reduction credits from any control measures that are not included in the RTP or TIP and that do not require a regulatory action in the regional emissions analysis used in the conformity analysis unless [MPO] or FHWA/FTA obtains written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by the appropriate entities [93.122(a)(4)(ii)].

San Francisco Bay Area Transportation Air Quality Conformity Protocol; July 26, 2006; Conformity Procedures

ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES: Before a conformity determination is made, written commitments must be obtained for any project-level mitigation or control measures. [93.125 (c)]

Language addressing 93.125(c) should include, at a minimum, the following:

In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, FHWA/FTA

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<p>must obtain from the project sponsor and/or operator written commitments, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measures in the construction or operation of the project identified as conditions for NEPA process completion. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. Prior to making a conformity determination on the RTP or TIP, [MPO] will ensure any project-level mitigation or control measures are included in the project design concept and scope and are appropriately identified in the regional emissions analysis used in the conformity analysis. Prior to making a project-level conformity determination, written commitments will be obtained before such mitigation or control measures are used in a project-level hot-spot conformity analysis. [93.125(c)].</p>	<p>Air Quality Conformity Protocol; July 26, 2006; Conformity Procedures</p>
<p>REVIEWER NOTES</p>	
<p>93.105(b)(2)(vi): TCM list/status is developed and addressed within the interagency consultation process in the context of conformity analyses and during public comment for RTP and TIP development and amendments.</p>	
<p>93.105(c)(1)(v): Full consultation is provided for all RTP amendments, including those involving exempt projects.</p>	
<p>93.105(c)(5): The Bay Area consultation procedures do not specifically discuss the development of assumptions as to location and design concept/scope for projects for which such features have not been adequately defined; however, such assumptions are developed early in the RTP and TIP conformity analysis process under sections II.c, III.c, and V of the interagency consultation procedures portion of the submitted protocol.</p>	
<p>93.105(e): The reference to 23 CFR 450.316(b) included in Section XI, Public Consultation Procedures should be changed to 23 CFR 450.316(a), consistent with DOT's revised transportation planning regulations. EPA is currently revising the federal transportation conformity rule to reflect this change.</p>	

EPA ACTION

The San Francisco Bay Area Transportation Air Quality Conformity Protocol (July 26, 2006), submitted by CARB on December 20, 2006, is consistent with the relevant requirements. Therefore, EPA staff recommends approval of the protocol as a revision to the San Francisco Bay Area portion of the California SIP.

ATTACHMENTS

1. San Francisco Bay Area Transportation Air Quality Conformity Protocol – Conformity Procedures (July 26, 2006), submitted by CARB on December 20, 2006.
2. San Francisco Bay Area Transportation Air Quality Conformity Protocol – Interagency Consultation Procedures (July 26, 2006), submitted by CARB on December 20, 2006.
3. The San Francisco Bay Area Transportation Air Quality Conformity Protocol – Conformity Procedures, approved by EPA on October 21, 1997 (62 FR 54587).
4. The San Francisco Bay Area Transportation Air Quality Conformity Protocol – Interagency Consultation Procedures, approved by EPA on October 21, 1997 (62 FR 54587).